

## SENATE BILL No. 374

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2-68.5; IC 16-34-1-10; IC 16-34-2.

**Synopsis:** Abortion. Makes certain findings. Extends the waiting period for an abortion from 18 to 48 hours. Imposes additional disclosure requirements relating to the informed consent to an abortion. Increases the penalties for abortion related violations as follows: (1) For failing to submit a timely pregnancy termination from a Class B misdemeanor to a Level 4 felony. (2) For performing an abortion not expressly provided by law from a Level 5 felony to a Level 4 felony. (3) For failing to obtain a parental consent when required from a Class A misdemeanor to a Level 4 felony. (4) For a violation of the informed consent requirements from a Class A infraction to a Level 4 felony. Provides that a person convicted of a crime concerning abortion is subject to professional disciplinary action. Provides that a provider may not accept payment or otherwise bind pregnant woman to make a payment for performing or inducing an abortion until after the expiration of the 48 hour waiting period. Provides that a provider may be civilly liable to an injured party for violating the statutory requirements for performing an abortion.

**Effective:** July 1, 2016.

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**Waltz**

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January 11, 2016, read first time and referred to Committee on Health & Provider Services.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 374

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-18-2-68.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2016]: **Sec. 68.5. "Conflict of interest**  
4 **disclaimer", for purposes of IC 16-34-2, means a written and oral**  
5 **statement divulging the following information to a pregnant**  
6 **woman considering an abortion:**

7 (1) **The amount of the abortion provider's gross income from**  
8 **the most recently completed taxable year of the abortion**  
9 **provider.**

10 (2) **The percentage of the abortion provider's gross income**  
11 **from the abortion provider's most recently completed taxable**  
12 **year that was attributable to the performance of abortions.**

13 (3) **A statement of the amount of income that the abortion**  
14 **provider would forego if the pregnant woman were to decide**  
15 **to continue the pregnancy to term.**

16 SECTION 2. IC 16-34-1-10 IS ADDED TO THE INDIANA CODE  
17 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2016]: **Sec. 10. The general assembly finds the following:**

**(1) Approximately sixty-one million (61,000,000) abortions have been performed in the United States since the decision in Roe v. Wade.**

**(2) Abortion is a tragedy which involves the taking of a human life.**

**(3) Every year, tens of thousands of viable unborn children are aborted for no other reason than a minor physical disability or the inconvenience that would be involved in placing that child in a loving home.**

SECTION 3. IC 16-34-2-1.1, AS AMENDED BY P.L.113-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least ~~eighteen (18)~~ **forty-eight (48)** hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

(A) The name of the physician performing the abortion, the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.

(B) That follow-up care by the physician or the physician's designee (if the designee is licensed under IC 25-22.5) and is available on an appropriate and timely basis when clinically necessary.

(C) The nature of the proposed procedure or information concerning the abortion inducing drug.

(D) Objective scientific information of the risks of and alternatives to the procedure or the use of an abortion inducing drug, including:

(i) the risk of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy; and



- 1 (iii) the potential danger of infertility.
- 2 (E) That human physical life begins when a human ovum is
- 3 fertilized by a human sperm.
- 4 (F) The probable gestational age of the fetus at the time the
- 5 abortion is to be performed, including:
- 6 (i) a picture of a fetus;
- 7 (ii) the dimensions of a fetus; and
- 8 (iii) relevant information on the potential survival of an
- 9 unborn fetus;
- 10 at this stage of development.
- 11 (G) That objective scientific information shows that a fetus
- 12 can feel pain at or before twenty (20) weeks of postfertilization
- 13 age.
- 14 (H) The medical risks associated with carrying the fetus to
- 15 term.
- 16 (I) The availability of fetal ultrasound imaging and
- 17 auscultation of fetal heart tone services to enable the pregnant
- 18 woman to view the image and hear the heartbeat of the fetus
- 19 and how to obtain access to these services.
- 20 (J) That the pregnancy of a child less than fifteen (15) years of
- 21 age may constitute child abuse under Indiana law if the act
- 22 included an adult and must be reported to the department of
- 23 child services or the local law enforcement agency under
- 24 IC 31-33-5.
- 25 (2) At least ~~eighteen (18)~~ **forty-eight (48)** hours before the
- 26 abortion, the pregnant woman will be informed orally and in
- 27 writing of the following:
- 28 (A) That medical assistance benefits may be available for
- 29 prenatal care, childbirth, and neonatal care from the county
- 30 office of the division of family resources.
- 31 (B) That the father of the unborn fetus is legally required to
- 32 assist in the support of the child. In the case of rape, the
- 33 information required under this clause may be omitted.
- 34 (C) That adoption alternatives are available and that adoptive
- 35 parents may legally pay the costs of prenatal care, childbirth,
- 36 and neonatal care.
- 37 (D) That there are physical risks to the pregnant woman in
- 38 having an abortion, both during the abortion procedure and
- 39 after.
- 40 (E) That Indiana has enacted the safe haven law under
- 41 IC 31-34-2.5.
- 42 (F) The:



(i) Internet web site address of the state department of health's web site; and

(ii) description of the information that will be provided on the web site and that are;

described in section 1.5 of this chapter.

(G) For the facility in which the abortion is to be performed, an emergency telephone number that is available and answered on a twenty-four (24) hour a day, seven (7) day a week basis.

(H) On a form developed by the state department and as described in IC 16-34-3, that the pregnant woman has a right to determine the final disposition of the remains of the aborted fetus.

(I) On a form developed by the state department, information concerning the available options for disposition of the aborted fetus.

(J) On a form developed by the state department, information concerning any counseling that is available to a pregnant woman after having an abortion.

The state department shall develop and distribute the forms required by clauses (H) through (J).

(3) The pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that:

(A) the information required by subdivisions (1) and (2) has been provided to the pregnant woman;

(B) the pregnant woman has been offered by the provider the opportunity to view the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible and that the woman has:

(i) viewed or refused to view the offered fetal ultrasound imaging; and

(ii) listened to or refused to listen to the offered auscultation of the fetal heart tone if the fetal heart tone is audible; and

(C) the pregnant woman has been given a written copy of the printed materials described in section 1.5 of this chapter.

(4) At least ~~eighteen (18)~~ **forty-eight (48)** hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a midwife (as defined in IC 34-18-2-19) to whom the responsibility has been delegated by the physician who is to perform the abortion or the



referring physician has provided the pregnant woman with a color copy of the informed consent brochure described in section 1.5 of this chapter by printing the informed consent brochure from the state department's Internet web site and including the following information on the back cover of the brochure:

(A) The name of the physician performing the abortion and the physician's medical license number.

(B) An emergency telephone number where the physician or the physician's designee may be contacted twenty-four (24) hours a day, seven (7) days a week.

(C) A statement that follow-up care by the physician or the physician's designee who is licensed under IC 25-22.5 is available on an appropriate and timely basis when clinically necessary.

**(5) At least forty-eight (48) hours before the abortion, the provider has provided to the pregnant woman a conflict of interest disclaimer.**

**(b) At least forty-eight (48) hours** before an abortion is performed, the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

(1) does not want to view the fetal ultrasound imaging; and

(2) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

**(c) A provider shall ensure that any information that must be presented to a pregnant woman under this section is presented to the pregnant woman individually in a private room. A provider shall ensure that the pregnant woman has an adequate opportunity to ask questions and receive answers that the pregnant woman can understand.**

**(d) If a pregnant woman is unable to read the written materials provided to the pregnant woman under this section, the written materials must be read to the pregnant woman and explained in a way that is understandable to the pregnant woman, if necessary. If the pregnant woman is unable to understand the fetal ultrasound imaging provided under subsection (b), the provider shall explain the fetal ultrasound imaging.**

**(e) The following apply to the separate pieces of information and services that must be provided to a pregnant woman under subsection (a)(1)(A) through (a)(1)(J), subsection (a)(2)(A) through**



(a)(2)(J), subsection (a)(3)(C), subsection (a)(4)(A) through (a)(4)(C), subsection (a)(5), and subsection (b):

(1) The provider shall sign under penalty of perjury a separate statement for each required piece of information and service verifying that the provider has complied with each requirement described in subsections (a) and (b).

(2) The pregnant woman shall sign a separate statement for each required piece of information and service affirming that the provider has complied with each requirement described in subsections (a) and (b).

SECTION 4. IC 16-34-2-5, AS AMENDED BY P.L.92-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) Every health care provider who performs a surgical abortion or provides, prescribes, administers, or dispenses an abortion inducing drug for the purposes of inducing an abortion shall report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. For each abortion performed and abortion inducing drug provided, prescribed, administered, or dispensed, the report shall include, among other things, the following:

(1) The age of the patient.

(2) The date and location the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.

(3) The health care provider's full name and address, including the name of the physicians performing the abortion or providing, prescribing, administering, or dispensing the abortion inducing drug.

(4) The name of the father if known.

(5) The age of the father, or the approximate age of the father if the father's age is unknown.

(6) The postfertilization age of the fetus, the manner in which the postfertilization age was determined, and, if after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the performance of the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug.



(7) For a surgical abortion, the medical procedure used for the abortion and, if the fetus was viable or had a postfertilization age of at least twenty (20) weeks:

(A) whether the procedure, in the reasonable judgment of the health care provider, gave the fetus the best opportunity to survive; and

(B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.

(8) For a nonsurgical abortion, the precise drugs provided, prescribed, administered, or dispensed, and the means of delivery of the drugs to the patient.

(9) The mother's obstetrical history, including dates of other abortions, if any.

(10) The results of pathological examinations if performed.

(11) For a surgical abortion, whether the fetus was delivered alive, and if so, how long the fetus lived.

(12) Records of all maternal deaths occurring at the location where the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.

(13) The date the form was transmitted to the state department and, if applicable, separately to the department of child services.

(b) The health care provider shall complete the form provided for in subsection (a) and shall transmit the completed form to the state department, in the manner specified on the form, not later than July 30 for each abortion occurring in the first six (6) months of that year and not later than January 30 for each abortion occurring in the last six (6) months of the preceding year. However, if an abortion is for a female who is less than fourteen (14) years of age, the health care provider shall transmit the form to the state department of health and separately to the department of child services within three (3) days after the abortion is performed.

(c) The dates supplied on the form may not be redacted for any reason before the form is transmitted as provided in this section.

(d) Each failure to complete or timely transmit a form, as required under this section, for each abortion performed or abortion inducing drug that was provided, prescribed, administered, or dispensed, is a **Class B misdemeanor: Level 4 felony.**

(e) Not later than June 30 of each year, the state department shall compile a public report providing the following:

(1) Statistics for the previous calendar year from the information





submitted under this section.

(2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for the calendar year that was submitted to the state department after the compilation of the statistics.

The state department shall ensure that no identifying information of a pregnant woman is contained in the report.

SECTION 5. IC 16-34-2-7, AS AMENDED BY P.L.158-2013, SECTION 235, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) ~~Except as provided in subsections (b) and (c);~~ A person who knowingly or intentionally performs an abortion not expressly provided for in this chapter commits a ~~Level 5~~ **Level 4** felony.

(b) A physician who performs an abortion intentionally or knowingly in violation of section 1(a)(1)(C) or 4 of this chapter commits a ~~Class A misdemeanor;~~ **Level 4 felony.**

(c) A person who knowingly or intentionally performs an abortion in violation of section 1.1 of this chapter commits a ~~Class A infraction;~~ **Level 4 felony.**

(d) A woman upon whom a partial birth abortion is performed may not be prosecuted for violating or conspiring to violate section 1(b) of this chapter.

**(e) A physician or other regulated health care professional who is convicted of a crime described in this section is subject to disciplinary action under IC 25-1-9.**

SECTION 6. IC 16-34-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. **A provider may not accept payment or otherwise obligate a pregnant woman to make a payment for performing or inducing an abortion until after the expiration of the forty-eight (48) hour period that commences after the provider:**

**(1) complies with each requirement imposed by; and**

**(2) obtains informed consent from the pregnant woman under;**

**section 1.1 of this chapter.**

SECTION 7. IC 16-34-2-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) **A provider who violates this chapter may be liable for any of the following to a party injured by the violation:**

**(1) Damages.**

**(2) Treble or punitive damages, as the injured party may elect, if the violation is knowing, willful, or intentional.**



1       **(b) In addition to any damages awarded under subsection (a),**  
2       **the court:**

3       **(1) shall award to the injured party reasonable attorney's fees,**  
4       **costs, and expenses relating to an action under this section;**  
5       **and**

6       **(2) may order temporary or permanent injunctive relief in the**  
7       **court's discretion.**

8       SECTION 8. [EFFECTIVE JULY 1, 2016] **(a) This act is severable**  
9       **in accordance with IC 1-1-1-8.**

10       **(b) This SECTION expires January 1, 2019.**

